



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 8, 1994

Ms. Kari A. Hernandez  
Assistant City Attorney  
The City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR94-333

Dear Ms. Hernandez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 23986.

The City of El Paso (the "city") has received a request for complaints concerning a certain adult entertainment establishment. Specifically, the requestor seeks "copies of documents in your possession that discuss or relate to any violations that may exist, or been noted to exist by the City of El Paso, in respect to the Body Rock Cafe, located at 1461 N. Lee Trevino." You have submitted the requested information to us for review and claim that sections 552.103 and 552.108 of the Government Code except it from required public disclosure.

Section 552.108 excepts from required public disclosure:

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . .
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution. . . .

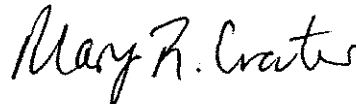
When a law enforcement agency is actively investigating a matter, section 552.108 excepts from disclosure all information relating to the investigation except that generally found on the first page of the offense report. *See generally* Open Records Decision No. 127 (1976) (citing *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976)). Normally section 552.108 applies only to law enforcement agencies. *See* Open Records Decision Nos. 493 (1988) at 2; 287 (1981) at 2. However, a non-law enforcement agency may claim section 552.108 to withhold information in its custody

that it intends to report to a law enforcement agency or that a law enforcement agency has determined will cause undue interference with law enforcement or prosecution if released. Attorney General Opinion MW-575 (1982) at 1-2 (indicating that section 552.108 may apply to information gathered by an administrative agency when its release would unduly interfere with law enforcement). Records that would otherwise be excepted from disclosure under section 552.108 do not necessarily lose that status while in the custody of an agency not directly involved with law enforcement. Open Records Decision No. 272 (1981) at 1-2.

We have examined the information submitted to us for review and have considered your arguments. We conclude that the city may withhold the requested information under section 552.108 of the Government Code.<sup>1</sup> As we resolve this matter under section 552.108, we need not address the applicability of section 552.103(a) of the Government Code at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Open Government Section

MRC/GCK/sbm

Ref.: ID# 23986

Enclosures: Submitted documents

cc: Ms. Deane A. Galloway, CLA  
Civil Litigation Specialist  
Scott, Hulse, Marshall, Feuille, Finger  
& Thurmond, P.C.  
Texas Commerce Bank Building  
11th Floor  
El Paso, Texas 79901  
(w/o enclosures)

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<sup>1</sup>We remind you that section 552.108 is a discretionary exception under the act. See Gov't Code § 552.007. Therefore, the city may choose to release to the public some or all of this information.